

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:09CR129
)	
v.)	
)	
BRYAN S. BEHRENS,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

This matter is before the Court upon defendant's motion for release (Filing No. [126](#)). Defendant moves the Court for release from imprisonment pursuant to 18 U.S.C. § 3143(b), which governs a defendant's release from imprisonment pending an appeal. The Court held a hearing on this motion on August 25, 2011. The Court finds defendant satisfies the criteria for release under § 3143(b).

On April 26, 2010, defendant pled guilty before this Court to one count of securities fraud. On November 1, 2010, following a two-day sentencing hearing, the district court sentenced defendant to 60 months imprisonment. On November 8, 2010, defendant filed a notice to appeal his sentence to the United States Court of Appeals for the Eighth Circuit. On July 13, 2011, the Eighth Circuit issued an opinion vacating defendant's sentence and remanding to the district court for further proceedings after determining defendant should have been

allowed to assert the no-knowledge defense to imprisonment found in 15 U.S.C. § 78ff(a).

Pursuant to § 3143(b)(1), a person convicted and sentenced for an offense shall be detained pending appeal unless a judicial officer finds:

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in . . .

(iii) a sentence that does not include a term of imprisonment,

• • •

The government concedes defendant does not pose danger to the safety of any person in the community. In considering the evidence presented to the Court at the evidentiary hearing, the Court finds defendant is not a flight risk. Throughout the pendency of this case, defendant was released on an Order Setting Conditions of Release (Filing No. 9). He was previously allowed to self-surrender to the Bureau of Prisons, and willingly did so on January 31, 2011. Further, the Court finds defendant's appeal was not for purposes of delay, and it raised a question of law or fact likely to result in "a sentence that does not include a term of imprisonment" pursuant to the Eighth Circuit's finding that

defendant should have been allowed to assert the no-knowledge defense to his sentence of imprisonment.

IT IS ORDERED:

- 1) Defendant's motion for release (Filing No. 126) is granted.
- 2) Defendant shall be released immediately based upon the same terms and conditions of the Order Setting Conditions of Release dated May 13, 2009 (Filing No. 9).

DATED this 29th day of August, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court